

Chapter 9

State Capitol Preservation Board

Part 1

General Provisions

63C-9-101 Title.

This chapter is known as the "State Capitol Preservation Board."

Enacted by Chapter 285, 1998 General Session

63C-9-102 Definitions.

- (1) "Board" means the State Capitol Preservation Board created by Section 63C-9-201.
- (2) "Capitol hill complex" means the grounds, monuments, parking areas, buildings, including the capitol, and other man-made and natural objects within the area bounded by 300 North Street, Columbus Street, 500 North Street, and East Capitol Boulevard, and includes:
 - (a) the White Community Memorial Chapel and its grounds and parking areas, and the Council Hall Travel Information Center building and its grounds and parking areas;
 - (b) the Daughters of the Utah Pioneers building and its grounds and parking areas and other state-owned property included within the area bounded by Columbus Street, North Main Street, and Apricot Avenue;
 - (c) the state-owned property included within the area bounded by Columbus Street, Wall Street, and 400 North Street; and
 - (d) the state-owned property included within the area bounded by Columbus Street, West Capitol Street, and 500 North Street.
- (3) "Capitol hill facilities" means all of the buildings on the capitol hill complex, including the capitol, and the exterior steps, entrances, streets, parking areas, and other paved areas of capitol hill.
- (4) "Capitol hill grounds" means the unpaved areas of the capitol hill complex.
- (5) "Executive director" means the executive director appointed by the board under Section 63C-9-401.

Amended by Chapter 256, 2006 General Session

Part 2

State Capitol Preservation Board

63C-9-201 State Capitol Preservation Board -- Creation -- Membership.

- (1) There is created the State Capitol Preservation Board.
- (2) The board shall consist of the following 11 members:
 - (a) the governor, or the lieutenant governor acting as the governor's designee;
 - (b) the president of the Senate or the president's designee, who shall be a member of the Senate;
 - (c) the speaker of the House of Representatives or the speaker's designee, who shall be a member of the House of Representatives;
 - (d) the state treasurer;
 - (e) the state attorney general;

- (f) two members of the Senate appointed by the president of the Senate, one from the majority party and one from the minority party;
- (g) two members of the House of Representatives appointed by the speaker of the House of Representatives, one from the majority party and one from the minority party;
- (h) the chief justice of the Supreme Court or the chief justice's designee, who shall be a member of the Supreme Court; and
- (i) the state historic preservation officer.

Amended by Chapter 256, 2006 General Session

63C-9-202 Terms -- Vacancies -- Chair -- Vice chair -- Meetings -- Compensation.

- (1)
 - (a) The governor, president of the Senate, speaker of the House, chief justice, state treasurer, state attorney general, and state historic preservation officer shall serve terms coterminous with their office.
 - (b) The other members shall serve two-year terms.
- (2) Vacancies in the appointed positions shall be filled by the original appointing authority for the unexpired term.
- (3)
 - (a) Except as provided in Subsection (3)(b), the governor is chair of the board.
 - (b) When the governor is absent from meetings of the board, the vice chair is chair of the board.
 - (c) The governor shall appoint a member of the board to serve as vice chair with the approval of a majority of the members of the board.
- (4) The board shall meet at least quarterly and at other times at the call of the governor or at the request of four members of the board.
- (5)
 - (a) A member who is not a legislator may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses as allowed in:
 - (i) Section 63A-3-106;
 - (ii) Section 63A-3-107; and
 - (iii) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.
 - (b) Compensation and expenses of a member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

Amended by Chapter 387, 2014 General Session

Part 3

Board Powers and Duties

63C-9-301 Board powers -- Subcommittees.

- (1) The board shall:
 - (a) except as provided in Subsection (2), exercise complete jurisdiction and stewardship over capitol hill facilities, capitol hill grounds, and the capitol hill complex;
 - (b) preserve, maintain, and restore the capitol hill complex, capitol hill facilities, capitol hill grounds, and their contents;

- (c) before October 1 of each year, review and approve the executive director's annual budget request for submittal to the governor and Legislature;
 - (d) by October 1 of each year, prepare and submit a recommended budget request for the upcoming fiscal year for the capitol hill complex to:
 - (i) the governor, through the Governor's Office of Management and Budget; and
 - (ii) the Legislature's appropriations subcommittee responsible for capitol hill facilities, through the Office of Legislative Fiscal Analyst;
 - (e) review and approve the executive director's:
 - (i) annual work plan;
 - (ii) long-range master plan for the capitol hill complex, capitol hill facilities, and capitol hill grounds; and
 - (iii) furnishings plan for placement and care of objects under the care of the board;
 - (f) approve all changes to the buildings and their grounds, including:
 - (i) restoration, remodeling, and rehabilitation projects;
 - (ii) usual maintenance program; and
 - (iii) any transfers or loans of objects under the board's care;
 - (g) define and identify all significant aspects of the capitol hill complex, capitol hill facilities, and capitol hill grounds, after consultation with the:
 - (i) Division of Facilities Construction and Management;
 - (ii) State Library Division;
 - (iii) Division of Archives and Records Service;
 - (iv) Division of State History;
 - (v) Office of Museum Services; and
 - (vi) Arts Council;
 - (h) inventory, define, and identify all significant contents of the buildings and all state-owned items of historical significance that were at one time in the buildings, after consultation with the:
 - (i) Division of Facilities Construction and Management;
 - (ii) State Library Division;
 - (iii) Division of Archives and Records Service;
 - (iv) Division of State History;
 - (v) Office of Museum Services; and
 - (vi) Arts Council;
 - (i) maintain archives relating to the construction and development of the buildings, the contents of the buildings and their grounds, including documents such as plans, specifications, photographs, purchase orders, and other related documents, the original copies of which shall be maintained by the Division of Archives and Records Service;
 - (j) comply with federal and state laws related to program and facility accessibility; and
 - (k) establish procedures for receiving, hearing, and deciding complaints or other issues raised about the capitol hill complex, capitol hill facilities, and capitol hill grounds, or their use.
- (2)
- (a) Notwithstanding Subsection (1)(a), the supervision and control of the legislative area, as defined in Section 36-5-1, is reserved to the Legislature; and
 - (b) the supervision and control of the governor's area, as defined in Section 67-1-16, is reserved to the governor.
- (3)

- (a) The board shall make rules to govern, administer, and regulate the capitol hill complex, capitol hill facilities, and capitol hill grounds by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (b) A violation of a rule relating to the use of the capitol hill complex adopted by the board under the authority of this Subsection (3) is an infraction.
- (c) If an act violating a rule under Subsection (3)(b) also amounts to an offense subject to a greater penalty under this title, Title 32B, Alcoholic Beverage Control Act, Title 41, Motor Vehicles, Title 76, Utah Criminal Code, or other provision of state law, Subsection (3)(b) does not prohibit prosecution and sentencing for the more serious offense.
- (d) In addition to any punishment allowed under Subsections (3)(b) and (c), a person who violates a rule adopted by the board under the authority of this Subsection (3) is subject to a civil penalty not to exceed \$2,500 for each violation, plus the amount of any actual damages, expenses, and costs related to the violation of the rule that are incurred by the state.
- (e) The board may take any other legal action allowed by law.
- (f) The board may not apply this section or rules adopted under the authority of this section in a manner that violates a person's rights under the Utah Constitution or the First Amendment to the United States Constitution, including the right of persons to peaceably assemble.
- (g) The board shall send proposed rules under this section to the legislative general counsel and the governor's general counsel for review and comment before the board adopts the rules.
- (4) The board is exempt from the requirements of Title 63G, Chapter 6a, Utah Procurement Code, but shall adopt procurement rules substantially similar to the requirements of that chapter.
- (5) The board shall name the House Building, that is defined in Section 36-5-1, the "Rebecca D. Lockhart House Building."
- (6)
 - (a) The board may:
 - (i) establish subcommittees made up of board members and members of the public to assist and support the executive director in accomplishing the executive director's duties;
 - (ii) establish fees for the use of capitol hill facilities and capitol hill grounds;
 - (iii) assign and allocate specific duties and responsibilities to any other state agency, if the other agency agrees to perform the duty or accept the responsibility;
 - (iv) contract with another state agency to provide services;
 - (v) delegate by specific motion of the board any authority granted to it by this section to the executive director;
 - (vi) in conjunction with Salt Lake City, expend money to improve or maintain public property contiguous to East Capitol Boulevard and capitol hill;
 - (vii) provide wireless Internet service to the public without a fee in any capitol hill facility; and
 - (viii) when necessary, consult with the:
 - (A) Division of Facilities Construction and Management;
 - (B) State Library Division;
 - (C) Division of Archives and Records Service;
 - (D) Division of State History;
 - (E) Office of Museum Services; and
 - (F) Arts Council.
 - (b) The board's provision of wireless Internet service under Subsection (5)(a)(vii) shall be discontinued in the legislative area if the president of the Senate and the speaker of the House of Representatives each submit a signed letter to the board indicating that the service is disruptive to the legislative process and is to be discontinued.

- (c) If a budget subcommittee is established by the board, the following shall serve as ex officio, nonvoting members of the budget subcommittee:
 - (i) the legislative fiscal analyst, or the analyst's designee, who shall be from the Office of Legislative Fiscal Analyst; and
 - (ii) the executive director of the Governor's Office of Management and Budget, or the executive director's designee, who shall be from the Governor's Office of Management and Budget.
 - (d) If a preservation and maintenance subcommittee is established by the board, the board may, by majority vote, appoint one or each of the following to serve on the subcommittee as voting members of the subcommittee:
 - (i) an architect, who shall be selected from a list of three architects submitted by the American Institute of Architects; or
 - (ii) an engineer, who shall be selected from a list of three engineers submitted by the American Civil Engineers Council.
 - (e) If the board establishes any subcommittees, the board may, by majority vote, appoint up to two people who are not members of the board to serve, at the will of the board, as nonvoting members of a subcommittee.
 - (f) Members of each subcommittee shall, at the first meeting of each calendar year, select one individual to act as chair of the subcommittee for a one-year term.
- (7)
- (a) The board, and the employees of the board, may not move the office of the governor, lieutenant governor, president of the Senate, speaker of the House of Representatives, or a member of the Legislature from the State Capitol unless the removal is approved by:
 - (i) the governor, in the case of the governor's office;
 - (ii) the lieutenant governor, in the case of the lieutenant governor's office;
 - (iii) the president of the Senate, in the case of the president's office or the office of a member of the Senate; or
 - (iv) the speaker of the House of Representatives, in the case of the speaker's office or the office of a member of the House.
 - (b) The board and the employees of the board have no control over the furniture, furnishings, and decorative objects in the offices of the governor, lieutenant governor, or the members of the Legislature except as necessary to inventory or conserve items of historical significance owned by the state.
 - (c) The board and the employees of the board have no control over records and documents produced by or in the custody of a state agency, official, or employee having an office in a building on the capitol hill complex.
 - (d) Except for items identified by the board as having historical significance, and except as provided in Subsection (7)(b), the board and the employees of the board have no control over moveable furnishings and equipment in the custody of a state agency, official, or employee having an office in a building on the capitol hill complex.

Amended by Chapter 215, 2016 General Session

Amended by Chapter 245, 2016 General Session

Part 4

Executive Director

63C-9-401 Executive director.

The board shall:

- (1) appoint an executive director to assist the board in performing its duties under this chapter;
- (2)
 - (a) require the budget and operations subcommittee to review and make recommendations to the board regarding:
 - (i) the executive director's annual performance; and
 - (ii) the executive director's suggestions for staff, including staff duties, performance, compensation, and personnel;
 - (b) approve, deny, or modify the subcommittee's recommendations, which shall be submitted to the board before the board submits its budget recommendations under Subsections 63C-9-301(1)(c) and (d); and
 - (c) make rules governing the review, compensation, and bonus process for the executive director and staff.

Amended by Chapter 256, 2006 General Session

63C-9-402 Executive director -- Duties.

The executive director shall:

- (1) develop, for board approval, a master plan with a projection of at least 20 years concerning the stewardship responsibilities, operation, activities, maintenance, preservation, restoration, and modification of the capitol hill complex, capitol hill facilities, and capitol hill grounds, including, if directed by the board, a plan to restore the buildings to their original architecture;
- (2) develop, as part of the master plan submitted for board approval, a furnishings plan for the placement and care of objects under the care of the board;
- (3) prepare, and recommend for board approval, an annual budget and work plan, that is consistent with the master plan, for all work to be performed under this chapter, including usual operations and maintenance and janitorial and preventative maintenance for the capitol hill complex, capitol hill facilities, capitol hill grounds, and their contents;
- (4) develop an operations, maintenance, and janitorial program for the capitol hill complex, capitol hill facilities, capitol hill grounds, and their contents;
- (5) develop a program to purchase or accept by donation, permanent loan, or outside funding items necessary to implement the master plan;
- (6) develop and maintain a registration system and inventory of the contents of the capitol hill facilities and capitol hill grounds and of the original documents relating to the buildings' construction and alteration;
- (7) develop a program to purchase or accept by donation, permanent loan, or outside funding items of historical significance that were at one time in the capitol hill facilities and that are not owned by the state;
- (8) develop a program to locate and acquire state-owned items of historical significance that were at one time in the buildings;
- (9) develop a collections policy regarding the items of historic significance as identified in the registration system and inventory for the approval of the board;
- (10) assist in matters dealing with the preservation of historic materials;
- (11) make recommendations on conservation needs and make arrangements to contract for conservation services for objects of significance;
- (12) make recommendations for the transfer or loan of objects of significance as detailed in the approved collections policy;

- (13) make recommendations to transfer, sell, or otherwise dispose of unused surplus property that is not of significance as defined in the collections policy and by the registration system;
- (14) approve all art and exhibits placed on capitol hill after board approval;
- (15) employ staff to assist him in administering this chapter and direct and coordinate their activities;
- (16) contract for professional services of qualified consultants, including architectural historians, landscape architects with experience in landscape architectural preservation, conservators, historians, historic architects, engineers, artists, exhibit designers, and craftsmen;
- (17) prepare annually a complete and detailed written report for the board that accounts for all funds received and disbursed by the board during the preceding fiscal year;
- (18) develop and manage a visitor services program for capitol hill which shall include public outreach programs, public tours, events, and communication and public relation services; and
- (19) manage and organize all transit and parking programs on the capitol hill complex, except that:
 - (a) the Legislative Management Committee shall direct the executive director's management and organization of transit and parking associated with the legislative area as defined in Section 36-5-1; and
 - (b) the governor shall direct the executive director's management and organization of transit and parking associated with the governor's area as defined in Section 67-1-16.

Amended by Chapter 314, 2015 General Session

63C-9-403 Contracting power of executive director -- Health insurance coverage.

- (1) For purposes of this section:
 - (a) "Employee" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who:
 - (i) works at least 30 hours per calendar week; and
 - (ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first of the calendar month following 60 days from the date of hire.
 - (b) "Health benefit plan" means the same as that term is defined in Section 31A-1-301.
 - (c) "Qualified health insurance coverage" means the same as that term is defined in Section 26-40-115.
 - (d) "Subcontractor" means the same as that term is defined in Section 63A-5-208.
- (2)
 - (a) Except as provided in Subsection (3), this section applies to a design or construction contract entered into by the board or on behalf of the board on or after July 1, 2009, and to a prime contractor or a subcontractor in accordance with Subsection (2)(b).
 - (b)
 - (i) A prime contractor is subject to this section if the prime contract is in the amount of \$2,000,000 or greater at the original execution of the contract.
 - (ii) A subcontractor is subject to this section if a subcontract is in the amount of \$1,000,000 or greater at the original execution of the contract.
- (3) This section does not apply if:
 - (a) the application of this section jeopardizes the receipt of federal funds;
 - (b) the contract is a sole source contract; or
 - (c) the contract is an emergency procurement.
- (4)

- (a) This section does not apply to a change order as defined in Section 63G-6a-103, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection (2).
 - (b) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection (2) is guilty of an infraction.
- (5)
- (a) A contractor subject to Subsection (2) shall demonstrate to the executive director that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employees' dependents during the duration of the contract.
 - (b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor shall:
 - (i) place a requirement in the subcontract that the subcontractor shall obtain and maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the subcontract; and
 - (ii) certify to the executive director that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the prime contract.
- (c)
- (i)
 - (A) A contractor who fails to meet the requirements of Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the division under Subsection (6).
 - (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (5)(b).
 - (ii)
 - (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).
 - (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (5)(a).
- (6) The department shall adopt administrative rules:
- (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
 - (b) in coordination with:
 - (i) the Department of Environmental Quality in accordance with Section 19-1-206;
 - (ii) the Department of Natural Resources in accordance with Section 79-2-404;
 - (iii) the State Building Board in accordance with Section 63A-5-205;
 - (iv) a public transit district in accordance with Section 17B-2a-818.5;
 - (v) the Department of Transportation in accordance with Section 72-6-107.5; and
 - (vi) the Legislature's Administrative Rules Review Committee; and
 - (c) that establish:
 - (i) the requirements and procedures a contractor must follow to demonstrate to the executive director compliance with this section that shall include:
 - (A) that a contractor shall demonstrate compliance with Subsection (5)(a) or (b) at the time of the execution of each initial contract described in Subsection (2)(b);
 - (B) that the contractor's compliance is subject to an audit by the department or the Office of the Legislative Auditor General; and
 - (C) that the actuarially equivalent determination required for the qualified health insurance coverage in Subsection (1) is met by the contractor if the contractor provides the department or division with a written statement of actuarial equivalency, which is no more

- than one year old, regarding the contractor's offer of qualified health coverage from an actuary selected by the contractor or the contractor's insurer, or an underwriter who is responsible for developing the employer group's premium rates;
- (ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:
 - (A) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation;
 - (B) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation;
 - (C) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6a-904 upon the third or subsequent violation; and
 - (D) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for employees and dependents of employees of the contractor or subcontractor who were not offered qualified health insurance coverage during the duration of the contract; and
 - (iii) a website on which the department shall post the commercially equivalent benchmark, for the qualified health insurance coverage identified in Subsection (1)(c), that is provided by the Department of Health, in accordance with Subsection 26-40-115(2).
- (7)
- (a)
 - (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or subcontractor who intentionally violates the provisions of this section shall be liable to the employee for health care costs that would have been covered by qualified health insurance coverage.
 - (ii) An employer has an affirmative defense to a cause of action under Subsection (7)(a)(i) if:
 - (A) the employer relied in good faith on a written statement of actuarial equivalency provided by:
 - (I) an actuary; or
 - (II) an underwriter who is responsible for developing the employer group's premium rates; or
 - (B) the department determines that compliance with this section is not required under the provisions of Subsection (3) or (4).
 - (b) An employee has a private right of action only against the employee's employer to enforce the provisions of this Subsection (7).
- (8) Any penalties imposed and collected under this section shall be deposited into the Medicaid Restricted Account created in Section 26-18-402.
- (9) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this section:
- (a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section 63G-6a-1602 or any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and
 - (b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.

Amended by Chapter 20, 2016 General Session
Amended by Chapter 355, 2016 General Session

Part 5

Fund Raising and Donations

63C-9-501 Soliciting donations.

- (1) The executive director, under the direction of the board, shall:
 - (a) develop plans and programs to solicit gifts, money, and items of value from private persons, foundations, or organizations; and
 - (b) actively solicit donations from those persons and entities.
- (2)
 - (a) Property provided by those entities is the property of the state and is under the control of the board.
 - (b) Subsection (2)(a) does not apply to temporary exhibits or to the personal property of persons having an office in a building on capitol hill.
- (3) The board:
 - (a) shall deposit money donated to the board into the State Capitol Fund established by this part;
 - (b) shall use gifts of money made to the board for the purpose specified by the grantor, if any; and
 - (c) may return to the donor any gift or money donated to the board if a majority of the board determines that use of the gift or money is unfeasible, or will otherwise not be placed or used on capitol hill.

Amended by Chapter 172, 2014 General Session

63C-9-502 Fund created -- Donations.

- (1) There is created an expendable special revenue fund entitled the "State Capitol Fund."
- (2) The fund consists of money generated from the following revenue sources:
 - (a) any donations, deposits, contributions, gifts, money, and items of value received from private persons, foundations, or organizations;
 - (b) appropriations made to the fund by the Legislature; and
 - (c) money received by the board from the federal government.
- (3)
 - (a) The fund shall earn interest.
 - (b) All interest earned on fund money shall be deposited into the fund.
- (4) The board may use fund money to:
 - (a) acquire historical and other items to furnish the capitol hill facilities;
 - (b) pay for the repair and maintenance of the capitol hill facilities and capitol hill grounds;
 - (c) pay for the rehabilitation of the capitol hill facilities and capitol hill grounds; and
 - (d) fund all costs incurred in complying with this chapter.

Amended by Chapter 314, 2015 General Session

Part 6

Custody, Control, and Acquisition of Furnishings

63C-9-601 Responsibility for items.

Furniture, furnishings, fixtures, works of art, and decorative objects for which the board has responsibility under this chapter are not subject to the custody or control of the State Library Board, State Library Division, the Division of Archives and Records Service, the Division of State History, the Office of Museum Services, the Utah Arts Council, the Division of Arts and Museums, the Alice Art Collection Committee, or any other state agency.

Amended by Chapter 24, 2006 General Session

63C-9-602 Transfer of certain historical items.

- (1)
- (a) A state agency or other state entity that possesses a state-owned item identified by the executive director and the board as an item of historical significance that was at one time located in the capitol hill facilities shall transfer the item to the inventory of the board at the direction of the executive director not later than the 60th day after the date that the executive director notifies the agency or entity.
 - (b) The state agency or other state entity shall subsequently transfer physical possession of the item to the board in accordance with policies and procedures established by the board.
- (2) This section does not apply to records or documents in the custody of the Division of Archives and Records Service.

Enacted by Chapter 285, 1998 General Session